

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Boleslaw J. and Janina Kielar

90-01076

Name of Respondent

Fidelity Investments

REPRESENTATION

For Claimants: Boleslaw Kielar.

For Respondent: David C. Boch, Esq. of Bingham Dana & Gould.

CASE INFORMATION

Statement of Claim filed: April 16, 1990.

Claimants' Submission Agreement signed on: May 25, 1989.

Statement of Answer filed by Respondent, Fidelity Brokerage Services, Inc. on October 9, 1990.

Respondent, Fidelity Brokerage Services, Inc. Submission Agreement signed on: October 8, 1990.

HEARING INFORMATION

Hearing Date/Session: September 24, 1991, 1 session.

Hearing Location: Boston, Massachusetts at the offices of the NASD, Inc.

CASE SUMMARY

Claimants, Boleslaw J. and Janina Kielar ("Claimants"), alleged that Respondent, Fidelity Brokerage Services, Inc. ("Respondent") mishandled their account and did not give them an opportunity to meet a margin call before liquidating Claimants' account at a substantial loss to the Claimants. Claimants' alleged that Respondent did not notify them of the maintenance call until 10:00 p.m. on October 28, 1987 and that an agent of the Respondent told Claimant Boleslaw Kielar that he had to bring in \$50,000 "right now". Claimants alleged that they had the money to cover the

maintenance call but that Respondent failed to give them a fair opportunity to bring the money in and cover the call. Claimant Boleslaw J. Kielar alleged that he suffered severe depression due to the wrongful conduct of Respondent through its agents.

Respondent maintained that it acted in accordance with industry standards in liquidating Claimants' option positions, and that Respondent had the right under its agreements with the Claimants to liquidate their account in order to satisfy the margin calls. Respondent maintained that Claimants were mailed three margin calls advising them of their obligation. Respondent maintained that its agent contacted Claimants to inform them that they needed to deposit additional funds the next day to meet a margin call, but that Boleslaw Kielar informed Respondent's agent that he had no further funds to meet the margin call and he needed more time. Respondent maintained that it was under an obligation to liquidate Claimant's account at that point. Respondent further maintained it had an unconditional, legal right to liquidate Claimants' account.

RELIEF REQUESTED

Claimants requested compensatory and punitive damages in the amount of \$200,000.00.

Respondent requested that Claimants' claim be dismissed in its entirety.

AWARD

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimants' claim is denied in its entirety.
2. That the parties shall each bear their respective costs, including attorneys' fees.

3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 hearing session fee previously deposited by the Claimants.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Julien F. Begien
Julien F. Begien
Public Arbitrator

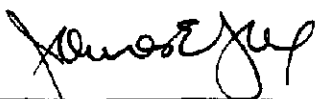
Date of Decision: 10/24/91

DATED: November 11th, 1991

3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 hearing session fee previously deposited by the Claimants.

ARBITRATION PANEL

Concurring Arbitrators' Signatures



James E. Fox
Industry Arbitrator

~~Date of Decision:~~
Executed on:

10/3/91

DATED: November 11th, 1991

Page 3.
Award #90-01076

3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 hearing session fee previously deposited by the Claimants.

ARBITRATION PANEL

Concurring Arbitrators' Signatures


Simon J. Tager
Public Arbitrator

Date of Decision: _____

DATED: November 11th, 1991